

1 Q Did you, in fact, find chemicals that were later
2 taken to the lab and tested?

3 A Yes, sir.

4 Q And did they contain methamphetamine?

5 A Yes.

6 MS. FARRAR: Objection, relevance.

7 THE COURT: Well, since that's the matter
8 that's subject to being suppressed, I'll overrule
9 the objection.

10 Q In fact, there were approximately 2000 grams of
11 mixtures containing methamphetamine; is that
12 right?

13 A Yes, sir. That was the report I got.

14 Q Did you see other or were other precursor
15 chemicals seized?

16 A Yes, sir.

17 Q Let me ask you, in your presence, did Mr. Whitley
18 make any statements?

19 A Yes, sir.

20 MS. FARRAR: Objection.

21 THE COURT: Overruled.

22 Q Prior to making that statement, had he been asked
23 any questions?

24 A No, sir.

25 Q And was this information volunteered, not in

1 response to a question by you or any other
2 officer?

3 A No, sir.

4 MS. FARRAR: Objection, leading.

5 MR. LANDREAU: Okay.

6 Q Prior to him making these statements, had you or
7 any other officer asked him any questions?

8 A No, sir.

9 Q What statements did he make?

10 A He had made one statement that his life was over
11 and this stuff has ruined his life; something to
12 that effect.

13 Q Okay.

14 A And also he made one statement that he didn't
15 mean to -- he didn't mean it by to blow it up.
16 He meant for them to pour it down the sink.

17 Q Well, did you hear him use the words blow it up?

18 A Yes, sir.

19 Q Didn't use the words pour it down the sink?

20 A Yes, sir. No, sir, he never said that.

21 Q Officer, at the time you entered the trailer,
22 were you concerned about the safety of you and
23 your fellow police officers?

24 A Yes, sir, I was.

25 Q Were you concerned about the safety of neighbors

1 and residents of that trailer park?

2 A Yes, sir, I was.

3 Q And what was your concern specifically about it?

4 A The hazardous waste, the explosion, the fire. A
5 number of hazards.

6 MS. FARRAR: Objection on the grounds that
7 there was no -- that was just an opinion.

8 THE COURT: Objection overruled.

9 MR. LANDREAU: Ms. Farrar may have some
10 questions for you.

11 CROSS-EXAMINATION

12 BY MS. FARRAR:

13 Q Hey. When you stated just now that Jerry Whitley
14 offered a statement or several statements which
15 were not in response to anything that y'all said,
16 didn't you really say at one point to Mr. Whitley
17 I thought you was going to blow it up?

18 A No, ma'am.

19 Q Did you say anything to Mr. Whitley?

20 A No, ma'am. I believe he was making these
21 statements to Sergeant Price.

22 Q So no statements were directed to you that you
23 recall?

24 A Not that I recall.

25 Q Do you remember Sergeant Price saying anything to

1 Mr. Whitley?

2 A No, sir.

3 Q Isn't it true when you went in the trailer that
4 the string was not attached to anything in the
5 ceiling?

6 A No, that's not true.

7 Q So if you said that in the preliminary hearing --

8 A No. What I'm saying is true. What you're saying
9 is wrong.

10 Q So in the preliminary hearing, if you stated to
11 the Court that the string was not attached to the
12 ceiling, then you would have been --

13 A They were attached to eye hooks in the ceiling.

14 Q But if you said that the string was on the floor,
15 you would have just not remembered?

16 A No, sir. No, ma'am.

17 Q No, ma'am, you wouldn't have remembered?

18 A I don't know what you're saying, really.

19 Q Do you remember that you testified at the
20 preliminary hearing that the string was actually
21 on the floor?

22 A No, ma'am. I don't remember testifying to that.

23 Q Did you personally go to Judge Funderburk to get
24 him to sign the search warrant?

25 A Yes, ma'am.

VOLUME 4

COURT OF CRIMINAL APPEALS NO. _____

CR-02-0739

Appeal To Alabama Court of Criminal Appeals

FROM

Circuit Court of Russell County, Alabama

CIRCUIT COURT NO _____ CC-02-186-188

CIRCUIT JUDGE _____ HONORABLE GEORGE R. GREENE

Type of Conviction/ Order Appealed From: _____ TRAFFICKING METH , POSS OF REC CONT SUBS, RESISTING ARREST

Sentence Imposed: _____ 35 YRS CONCUR, 5 YRS CONCUR, 6 MTHS CONSEC

Defendant Indigent: ☐ YES ☒ NO

JERRY E. WHITLEY

Name of Appellant

ATTY MICHAEL J WILLIAMS SR (205)-705-0200
(Appellant's Attorney) (Telephone No.)

P.O. BOX 1068
(Address)

AUBURN, AL 36831
(City) (State) (Zip Code)

V.

STATE OF ALABAMA

Name of Appellee

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)

1 Q Where did you have to go?

2 A To his residence.

3 Q What time of day was it, if you remember?

4 A It was sometime after 3:00. The time should be
5 on the search warrant. I don't recall the exact
6 time.

7 Q Would it have been 8:00?

8 A It could have been.

9 Q Would there be any reason that you know of why a
10 three was changed to eight in the time part of
11 the search warrant?

12 A I'm not aware of that.

13 Q When you first said that Caylene White answered
14 the door, did she come to the door and just speak
15 through the inner door?

16 A No, ma'am. She was face-to-face with us.

17 Q So she actually propped open the door?

18 A Yes. Yes, ma'am. The door was open.

19 Q What do you mean the door was open?

20 A It wasn't closed.

21 Q It never was closed when you got there?

22 A No, ma'am. Sergeant Price knocked on the door
23 and she opened the door.

24 Q Did she open it inside ways or outside ways?

25 A I don't recall. I believe it's inside. Most

1 trailers are, but I don't recall on that one.

2 Q How did you know that there was a surveillance
3 camera in the window that you testified that
4 Moseson looked at?

5 A I saw it.

6 Q Did you see a red light?

7 A No, ma'am.

8 Q So it wasn't actually a camera that was
9 camouflaged?

10 A No, ma'am.

11 Q Is that your testimony?

12 A No, ma'am.

13 Q Was there any evidence before you actually
14 stopped Moseson or saw Moseson that anyone was
15 violating the law at the residence?

16 A No, ma'am.

17 Q When you saw Moseson come out of the house and
18 you were on the street, did you have any reason
19 to believe that he was violating the law?

20 A No, ma'am.

21 Q When you approached him, did you tell him that he
22 was free to leave?

23 A No, ma'am. I did not say you are free to leave.

24 Q Did you reach into his pocket and pull out the
25 contraband?

1 A At one point, yes, I did.

2 Q When the alleged informant told you that there
3 was a cook going on, how did you know what that
4 meant?

5 A How did I know what that meant? I've worked meth
6 labs before and I've had some specific training
7 on clandestine methamphetamine laboratories.

8 Q Did the informant know that you knew what that
9 meant?

10 A I've never talked to him before or since. I
11 don't know what he knew.

12 Q How did -- did he give you any other information
13 which led you to believe that there was criminal
14 activity going on besides what you've testified
15 to, or she?

16 A Stated that there was firearms in the house,
17 booby-traps, surveillance equipment, police and
18 sheriff's department scanners. Made statements
19 to that effect.

20 Q Did the individual state he had recently been in
21 the trailer?

22 A Yes, sir. Yes, ma'am.

23 Q Okay.

24 MS. FARRAR: That's all I have at this time,
25 Your Honor.

1 THE COURT: You may step down. Who is the
2 State's next witness?

3 MR. LANDREAU: State rests, Your Honor.

4 THE COURT: All right. Would the Defendant
5 have anything to present at this time?

6 MS. FARRAR: Yes, Your Honor. Defense would
7 call Cindy Hoyle to the stand.

8 MR. LANDREAU: Your Honor, Agent Whitten has
9 a case in the other courtroom. May he step down
10 there?

11 THE COURT: Yes, he may.

12 CINDY HOYLE

13 was sworn and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. FARRAR:

16 Q Please state your name for the record?

17 A Cindy Hoyle.

18 Q I'm sorry?

19 A Cindy Hoyle.

20 Q How do you spell that last name?

21 A H-o-y-l-e.

22 Q And on September 31st of '01, where did -- I'm
23 sorry, September 21st of 2001, where did you
24 live?

25 A 24 Rusk Drive.

1 Q And do you recall anything unusual happening that
2 afternoon?

3 A I was standing outside and I seen one of the guys
4 pull out one of the guys in the house.

5 Q What guys did you see?

6 A It was -- there was a bald-headed guy. There was
7 a long-headed guy.

8 Q Did they have on Metro Narcotics Task Force gear?

9 A Yes.

10 Q Did you notice anything prior to that?

11 A They pulled them out of that house, just jerked
12 them out of the house when they knocked on the
13 door.

14 Q Who did they jerk out of the house? Do you see
15 him in the courtroom, the person that was pulled
16 out of the house?

17 A Huh-uh (negative response).

18 Q Was it a female or male?

19 A It was a male.

20 Q And this was across the street from where you
21 live?

22 A Diagonally from where I lived.

23 Q Diagonal. So how far away from you -- how far
24 away from that home were you when you were
25 watching? Were you on the road?

1 A Yeah. I was watching on -- we was watching on
2 the road, me and my husband that I was married
3 to.

4 Q What was the first thing you saw when you went
5 out there?

6 A That he jerked one of the guys out of there, out
7 of that house.

8 Q Could you identify who it was that jerked
9 somebody out of the house? Is it anyone in this
10 courtroom?

11 A It was a bald-headed guy, a real bald-headed guy.

12 Q And did you watch him go up to the door of the
13 trailer?

14 A Uh-huh (positive response).

15 MR. LANDREAU: Judge, now I'm going to
16 object to her leading her own witness.

17 THE COURT: Sustain the objection.

18 Q What happened after somebody was jerked out of
19 the house?

20 A Put in the police car. That's the last thing I
21 seen.

22 Q Did you watch the whole thing?

23 A Huh-uh (negative response).

24 Q How many people were arrested that you personally
25 saw?

1 A The girl and one guy. That's all I seen.

2 Q And do you recall any of the Metro Narcotics
3 officers saying anything to you?

4 A Huh-uh (negative response).

5 MS. FARRAR: I believe that's all I have.

6 Mr. Landreau may have a question or two for you.

7 CROSS-EXAMINATION

8 BY MR. LANDREAU:

9 Q Your trailer, is it on the right or left as you
10 go down Rusk Drive?

11 A It's the opposite side from where they got
12 busted.

13 Q Well, is that on the right or is that on the
14 left?

15 A It was on the left.

16 Q So if I'm going east on 80 and turn in, your
17 trailer is on the left?

18 A Uh-huh (positive response).

19 Q How many trailers down?

20 A Oh, I don't know.

21 Q Best judgment?

22 A Huh?

23 Q What's your best judgment?

24 A I don't count the trailers.

25 Q Well, how long had you lived there at that time?

1 A I lived there probably six months because I just
2 moved to town.

3 Q Well, how many trailers are between your trailer
4 and Mr. Whitley's trailer?

5 A Between? There's no --

6 Q Ma'am?

7 A We was on the opposite side from where he lived.

8 Q Well, actually, if your trailer is on the left,
9 so is his trailer. So you're on the same side?

10 A We was on opposite sides, I'm sorry.

11 Q Well, how many trailers are between you on
12 opposite sides?

13 A Probably -- you could see his house.

14 Q That's not what I'm asking. I'm asking you how
15 many more trailers do you have to go up to get to
16 his trailer?

17 EXAMINATION

18 BY THE COURT:

19 Q Let me ask you, do you remember what your address
20 was?

21 A 24 Rusk Drive.

22 Q Did you have a specific lot number?

23 A 24.

24 Q 24. Do you know what his lot number was?

25 A Not really, because all of them was changed by

1 911 when I first moved there.

2 Q Well, after it was changed, what was your lot
3 number?

4 A I don't know.

5 Q And how long has it been since you've lived
6 there?

7 A Six months.

8 Q Was it changed after you moved or while you still
9 lived there?

10 A While I was living there.

11 Q And it was 24 before it was changed, is that
12 correct, or after?

13 A They all had different -- I don't really know.

14 Q Well, were they numbered one, two, three, four
15 and five on to 24, or were even numbers on one
16 side of the street and odd numbers on the other
17 side of the street?

18 A It was 24 when I first moved there.

19 Q In other words, you don't know whether they were
20 numbered sequentially or not; is that correct?

21 A Right, because they all had different numbers on
22 them.

23 THE COURT: Okay.

24 Q (By Mr. Landreau:) Now, ma'am, you saw a Metro
25 Narcotics agent or someone grab a man?

1 Q So how did she know your phone number?

2 A Probably the lady that lives next door, used to
3 live next door to her, Carolyn.

4 Q So somebody else talked to you about testifying
5 and then gave your number to Ms. Farrar?

6 A Uh-huh (positive response).

7 Q Who was it that talked to you about testifying?

8 A Nobody talked to me. She asked me about
9 testifying.

10 Q Huh?

11 A She asked me about testifying.

12 Q And that was the first time?

13 A That's the first time.

14 Q When was that?

15 A I don't remember.

16 Q Well, was it a year ago?

17 A Oh, it's been a year ago.

18 Q Been at least a year?

19 A (Witness nods head affirmatively.)

20 MR. LANDREAU: No further questions.

21 THE COURT: May this witness be excused?

22 MS. FARRAR: No. I have a question, Your
23 Honor.

24

25

REDIRECT EXAMINATION

BY MS. FARRAR:

Q Ms. Hoyle, I don't believe I talked to you -- I won't lead. I'll withdraw that. When was the first time you remember hearing from me by phone?

A When you sent me the subpoena to court from Carolyn. Subpoena that you gave her you told her to give to me.

Q So I never called you before I sent the subpoena, did I?

A Yeah. You talked to me and Carolyn.

Q Okay. Did I tell you -- do you remember what I told you?

A You asked me would I come and testify.

Q Did I ask you to testify to anything in particular?

A No.

Q Did I tell you what to say?

A No, you didn't tell me what to say.

Q Did I ask you what you'd probably say?

A No. You asked me what did I see.

Q Did you tell me what you saw?

A Yes.

Q Is there anything else that you remember from the conversation?

1 A I told you I didn't really want to be here.

2 Q And when was that conversation that you told me
3 that you really didn't want to be here?

4 A The other day when you called.

5 Q Did you -- there was some confusion, I believe,
6 earlier when I questioned you. Do you know the
7 person sitting next to me?

8 A Yes.

9 Q Was he the one in the doorway?

10 MR. LANDREAU: Judge, I object.

11 A It's been awhile. I really can't --

12 MR. LANDREAU: The witness has already
13 testified she didn't recognize anybody in this
14 courtroom.

15 THE COURT: All right. I'll sustain the
16 objection.

17 MS. FARRAR: I appreciate you being here,
18 Ms. Hoyle. That's all.

19 RECROSS-EXAMINATION

20 BY MR. LANDREAU:

21 Q Ms. Hoyle, are you on any kind of medication
22 today?

23 A No.

24 MR. LANDREAU: No further.

25 THE COURT: Who is the Defendant's next

1 witness?

2 MR. LANDREAU: You may step down.

3 MS. FARRAR: Steven Moseson.

4 (Brief pause.)

5 THE COURT: Let's go ahead and take a
6 five-minute break. Ms. White was not subpoenaed.

7 MS. FARRAR: She did not get served?

8 THE COURT: She was not served.

9 MS. FARRAR: Okay. Thank you.

10 (Recess.)

11 STEVE MOSESON

12 was sworn and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FARRAR:

15 Q Please state your name?

16 A Steve Moseson.

17 Q And do you remember a day on September 21st,
18 2001, when you were approached by Metro Narcotics
19 agents?

20 A Yes, I do.

21 Q What was the first thing that you remember
22 happening?

23 A I walked out the door and seen them pull up.
24 That was the first thing that happened.

25 Q Do you remember walking to your vehicle?

1 A I was walking down the steps coming out of the
2 door. I was going to get in the truck.

3 Q How far away was your truck from the trailer, if
4 you recall?

5 A About from me to you.

6 Q And, for the record, how many feet would you say
7 that is?

8 A 15.

9 Q And did you make it to the truck?

10 A No.

11 Q How far away from the truck were you when
12 something else happened?

13 A About halfway.

14 Q And what happened then?

15 A Mr. Whitten and there was another fella that was
16 driving, I believe, he's not in here now, but he
17 had a gun on me and got out of the car and told
18 me to get on my knees, and Mr. Whitten searched
19 me.

20 Q What did they find?

21 A I had \$25.00 worth of meth in my pocket. I was
22 trying to get my keys out of my pocket, and he
23 grabbed my hand and said what have you got there,
24 and I pulled my hand out and it come out.

25 Q Did you say anything?

1 A No.

2 Q Then what happened, if you remember?

3 A They handcuffed me.

4 Q Did they put you into any kind of car at that
5 point?

6 A No. They set me to the side.

7 Q Where were you sitting in relation to the
8 trailer?

9 A Right there between him and my truck.

10 Q So it was maybe eight feet from the trailer; is
11 that halfway?

12 A Probably.

13 Q Did you have a full view of the front door?

14 A Yes.

15 Q What happened next that you saw?

16 A They went to the door, knocked on the door, and
17 Caylene opened the door.

18 Q They being who?

19 A Officer Whitten and the other one.

20 Q Can you describe the other one?

21 A Bald-headed.

22 Q And after Caylene answered, what happened?

23 A They pulled her out of the front door.

24 Q And then where did they put her?

25 A Off to the side.

1 Q Did they go back to the front door at that point?

2 A Yes.

3 Q And were their guns drawn?

4 A Yes.

5 Q Did they say anything?

6 A Metro Narcotics. I remember them saying Metro
7 Narcotics.

8 Q Was the door shut at that point?

9 A Yes.

10 Q What kind of door was it, if you remember?

11 A It's a trailer door.

12 Q Was it the kind you can see through?

13 A No.

14 Q And then what happened?

15 A The door opened.

16 Q Could you see who was on the other side?

17 A I didn't see them till they pulled him out.

18 Q Who pulled who out?

19 A I can't remember exactly who pulled who out. I
20 know Jerry came out of the door. There were two
21 officers at the door.

22 Q The same two you described before?

23 A Right.

24 Q What else happened?

25 A After they pulled him out, they went inside and

1 got Wayne out.

2 Q Did you hear any talk?

3 A I heard -- I couldn't make out the words, but I
4 heard hollering and yelling, but there was a
5 bunch of voices, you know, a conglomeration of
6 voices. I mean, there was a big disturbance
7 there. There was a lot going on at that moment.
8 I was on my hands and knees in the front yard
9 handcuffed.

10 MS. FARRAR: That's all I have. Mr.
11 Landreau may have a question or two.

12 MR. LANDREAU: No questions for this
13 witness.

14 THE COURT: Who is the Defendant's next
15 witness?

16 MR. LANDREAU: You may step down, Mr.
17 Moseson.

18 MS. FARRAR: Your Honor, Wayne Meadows.

19 (Brief pause.)

20 WAYNE MEADOWS

21 was sworn and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FARRAR:

24 Q Please state your name?

25 A Wayne Meadows.

1 Q On September 21st of 2001, do you recall when
2 Metro Narcotics Task Force came to where you
3 were?

4 A Yes, ma'am.

5 Q Or do you recall that day?

6 A Yes, ma'am.

7 Q And where were you that day?

8 A At the residence of Mr. Whitley.

9 Q The person next to me; correct?

10 A Yes, ma'am.

11 Q And do you recall any kind of disturbance while
12 you were over there?

13 A Yes, ma'am.

14 Q What was the first thing you remember?

15 A I was sitting in the living room with Caylene
16 White and there was a knock on the door, and she
17 went to the door and asked who was there and they
18 said police, and I don't know if the door was
19 pushed open or if she opened the door. I don't
20 know.

21 Q Did you get a chance to look through the door?

22 A No, I didn't.

23 Q So after the door was opened, did you see what
24 happened next?

25 A No. I walked kind of down the first part of the

1 hallway, and Mr. Whitley was in the back part of
2 the house, and I told him that the police were
3 outside.

4 Q And then what happened?

5 A Then he came by me in the doorway going to the
6 door to see what they wanted, and I just heard
7 some banging, you know, like the storm door
8 banging back and forth and a bunch of commotion
9 right there at the door. I was looking out the
10 back door. I was going to run out the back door
11 of the house, but there was an agent in the
12 backyard, so I just turned around and came back
13 to the living room and sat back down.

14 Q Did you look at the front door at all after that?

15 A When I returned to the living room, the front
16 door was just partially open.

17 Q Did you get to see out that front door at that
18 point?

19 A No, ma'am.

20 MS. FARRAR: That's all the questions I
21 have. Mr. Landreau may have some for you. Thank
22 you.

23 CROSS-EXAMINATION

24 BY MR. LANDREAU:

25 Q Mr. Meadows, was Jerry Whitley operating a

1 methamphetamine lab in there?

2 MS. FARRAR: Objection, Your Honor.
3 Relevance.

4 THE COURT: Well, this is a motion to
5 suppress hearing at this point, and I'll sustain
6 the objection.

7 Q Did you notice some fishing line in that trailer?

8 A No, sir, not really, no.

9 Q Mr. Meadows, wasn't there some line that ran from
10 the front door to a candle or some type of flame
11 in the back?

12 A Not that I'm aware of.

13 Q Do you recall Jerry Whitley telling you to blow
14 the trailer up?

15 A No, sir. I don't recall him telling me to blow
16 the trailer up, no, sir.

17 Q Do you remember the plea agreement you entered
18 into?

19 A Yes, sir.

20 Q You remember testifying in front of the Court?

21 A I heard -- I heard someone on the outside of the
22 house say light it. That's what I heard. I
23 didn't hear anybody say anything about blow
24 anything up.

25 Q Well, you recognize the voice that said light it?

1 A Yes, sir. I believe it was Mr. Whitley.

2 Q The man you've known for a long time, hadn't you?

3 A Approximately a year.

4 Q And shortly after you heard that voice say light
5 it, the officers came in and got you and got you
6 out of the trailer; is that right?

7 A It was probably two minutes after that.

8 Q Where were you standing when they came in and got
9 you?

10 A I was sitting on a bar stool there. There was
11 like a little counter between the kitchen and the
12 living room, and I was sitting on a bar stool
13 right there by that counter.

14 Q Mr. Meadows, on that same counter where you were
15 sitting, were there not a great many coffee
16 filters and Ephedrine bottles and residue of the
17 Ephedrine?

18 MS. FARRAR: Objection.

19 THE COURT: I'm going to overrule the
20 objection.

21 Q You may answer the question, Mr. Meadows.

22 A I really don't recall.

23 Q Well, do you recall the large canisters that were
24 in the kitchen about three or four feet from you?

25 A Yes, sir. That was like jars.

1 Q Do you recall glass jars with a white mixture in
2 them?

3 A Yes, sir. I saw the jars on the kitchen floor.

4 Q All of those were clearly visible from where you
5 were sitting; correct?

6 A Yes, sir.

7 Q And the officer that came in to secure you, it
8 would have been in his plain view, wouldn't it?

9 A Well, he would had to have step around that
10 counter I was sitting at.

11 Q Okay.

12 A They was on the kitchen floor.

13 Q Now, would the officers have had any way of
14 knowing that you were the only other person in
15 the trailer?

16 A No, no.

17 MS. FARRAR: Objection.

18 A I wouldn't think so.

19 Q Let me ask you this.

20 THE COURT: I'll sustain the objection.

21 Q Did you tell them there was nobody else in the
22 trailer?

23 A They asked if there was anybody else in the
24 trailer. I told them no.

25 Q Did you hear anybody else say that?

1 A No, sir.

2 Q This trailer, did it belong to Mr. Whitley?

3 MS. FARRAR: Objection.

4 A I'm not sure who it belonged to.

5 Q Well, who was living there?

6 A Mr. Whitley.

7 MS. FARRAR: Objection.

8 Q Let me ask you something.

9 THE COURT: Objection is overruled.

10 Q How long have you known Mr. Whitley?

11 A Oh, approximately -- before this incident,
12 probably about six or eight months.

13 Q Do you recall seeing Mr. Moseson there earlier?

14 A Yes, sir.

15 Q Did Mr. Moseson buy some methamphetamine from
16 Jerry Whitley?

17 A I'm not sure.

18 Q Did you see a transaction between them?

19 A No, sir, I didn't.

20 Q Okay.

21 MR. LANDREAU: No further questions for this
22 witness.

23 THE COURT: Any further questions, Ms.
24 Farrar?

25 MS. FARRAR: No, Your Honor.

EXAMINATION

BY THE COURT:

Q Mr. Meadows, there's been some testimony in this courtroom prior to your testimony today that there was a strong smell of ether or other substance on or about your person as if something had been spilled on you. Had you had something, either ether or something else, spilled on you immediately before the police raid on that trailer?

A No, sir. Nothing was spilled on me.

Q Did you smell ether in the trailer or something similar to ether?

A Yes, sir.

THE COURT: Thank you.

MS. FARRAR: Your Honor, I would have recross, I mean, redirect.

THE COURT: Okay.

(Brief pause.)

MS. FARRAR: I'll withdraw, I'm sorry.

THE COURT: All right. Who is your next witness?

MS. FARRAR: That's all, Your Honor.

THE COURT: All right. Anything further on behalf of the State?

1 MR. LANDREAU: No, sir, unless the Court.
2 wishes some type of closing argument.

3 THE COURT: You may do so if you want to,
4 but I'm not going to require it.

5 MR. LANDREAU: Judge, I'll keep it very
6 brief. This is a classic case of exigent
7 circumstances. The officers received information
8 that was insufficient for a search warrant. They
9 went there to set up surveillance. They
10 encountered an individual who smelled strongly of
11 the precursor chemicals to methamphetamine. They
12 went to the door in an attempt to verify who
13 lived there, and at that point they were
14 confronted by people screaming to light it or
15 blow it up, and they entered the trailer to
16 protect themselves and the citizens from the
17 threat of an explosion. Also, obviously, it
18 would serve the dual purpose to preserve
19 evidence. They went in there and secured Mr.
20 Meadows, brought him out, and then immediately
21 got a search warrant.

22 We think it's a classical case of probable
23 cause that coexists with exigent circumstances.

24 THE COURT: Ms. Farrar, do you have anything
25 you'd like to add?

1 MS. FARRAR: Just really briefly, Your
2 Honor. Police officers cannot create their own
3 exigent circumstances. Rather than in
4 encountering an individual, they went up to him
5 and actually arrested him illegally and guns were
6 drawn, and they actually did raid the residence
7 of my client. It was an illegal arrest, and
8 anything that stems from it would be poisonous
9 fruits.

10 Also, even though perhaps it could be argued
11 that my client, Mr. Whitley, does not have
12 standing to use the Moseson arrest, it actually
13 is what was used to create the exigent
14 circumstances, so I believe this would be
15 allowable. That's all I have, Your Honor.

16 THE COURT: All right. The Court would deny
17 the motion to suppress. Thank you.

18 MS. FARRAR: Your Honor, I would like to ask
19 during the trial if I might be able to have a
20 continuing objection to the admission of any of
21 the arrests itself, the search warrant, any
22 statements or seized contraband as a result of
23 what we would like to preserve our objection as
24 an illegal arrest.

25 THE COURT: Yeah. I'll let you have a

1 continuing objection.

2 MS. FARRAR: Thank you, Your Honor.

3 (End of proceedings.)
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STATE OF ALABAMA
IN THE CIRCUIT COURT FOR THE COUNTY OF RUSSELL
TWENTY-SIXTH JUDICIAL CIRCUIT
CRIMINAL

STATE OF ALABAMA

v.

Case Nos. CC 02-186, 187 188

JERRY E. WHITLEY,

Defendant.

REPORTER'S OFFICIAL TRANSCRIPT

Before:

Honorable George R. Greene and Jury
Phenix City, Alabama - December 5, 2002

APPEARANCES:

For the State:

Buster Landreau, Esq.
Chief Deputy District Attorney

For the Defendant:

Laural Farrar, Esq.
Phenix City, Alabama

Linda S. Wilson
Official Court Reporter

1 (Jury venire present.)

2 THE COURT: Which case would the State call
3 for trial at this time?

4 MR. LANDREAU: Your Honor, the State would
5 call State of Alabama versus Jerry Whitley, Case
6 Number 2002-186 on a charge of trafficking in
7 methamphetamine, Case Number 2002-187 on a charge
8 of possession of methamphetamine, and 2002-188 on
9 a charge of resisting arrest.

10 THE COURT: State ready to proceed?

11 MR. LANDREAU: State is ready, Your Honor.

12 THE COURT: Defendant ready to proceed?

13 (Bench conference, off record.)

14 (Brief pause.)

15 THE COURT: All right, ladies and gentlemen
16 of the jury. The State has called for trial the
17 cases styled the State of Alabama versus Jerry
18 Whitley.

19 Is the Defendant ready to proceed at this
20 time?

21 MS. FARRAR: Ready, Your Honor.

22 (Jury venire sworn.)

23 THE COURT: Ladies and gentlemen, the State
24 has called for trial the cases that are styled
25 the State of Alabama versus Jerry Whitley.

1 In Case Number CC 2002-186, this case comes
2 to the Court by way of an indictment returned by
3 a grand jury impaneled here in Russell County.
4 The indictment is not evidence in the case and
5 may not be considered by you as evidence in the
6 case. This particular indictment charges the
7 Defendant, Jerry E. Whitley, with the offense of
8 trafficking in methamphetamine and alleges that
9 he did, on or about the 21st day of September,
10 2001, knowingly sell, deliver or bring into the
11 State of Alabama or was knowingly in actual or
12 constructive possession of 28 grams or more of
13 methamphetamine or any mixture containing
14 methamphetamine, in violation of Section
15 13A-12-231 of the Code of Alabama of 1975, as
16 amended. To this charge, the Defendant has
17 entered a plea of not guilty.

18 In Case Number CC 2002-187, the Defendant,
19 Jerry E. Whitley, is charged with the offense of
20 unlawful possession of a controlled substance.
21 The indictment in this case alleges that the
22 Defendant did unlawfully possess methamphetamine,
23 a controlled substance, contrary to and in
24 violation of Section 13A-12-212 of the Code of
25 Alabama of 1975, as amended, and against the

1 peace and dignity of the State of Alabama. To
2 that charge, the Defendant has entered a plea of
3 not guilty.

4 And the third charge in Case Number
5 CC 2002-188 also comes to the Court by way of an
6 indictment returned by a grand jury impaneled
7 here in Russell County, and the Defendant is
8 charged with the offense of resisting arrest and
9 alleges that on or about the 21st of September,
10 2001, the Defendant did intentionally prevent or
11 attempt to prevent Agents Whitten, Price, Memmo
12 and Spear from effecting a lawful arrest of
13 himself, in violation of Section 13A-10-41 of the
14 Code of Alabama. To this charge, the Defendant
15 has entered a plea of not guilty.

16 The Defendant is presumed to be innocent
17 until proven guilty in all three of these
18 charges.

19 (Voir dire of jury venire.)

20 (Jury not present.)

21 THE COURT: Do we have any challenges?

22 MR. LANDREAU: Judge, I have to confess I'm
23 not sure that this is grounds for a challenge for
24 cause, but Ms. Jessie Smith indicated she is
25 allergic to ammonia. I've been told by my lab

1 person that some of this evidence does smell of
2 ammonia, and I'm worried about if they take it
3 into a jury room, which is a fairly small
4 confined space, and I'd move to challenge her for
5 that reason. I think there may be a problem with
6 her being able to view this evidence.

7 THE COURT: Health hazard to a juror I don't
8 know is listed as one of the challenges for
9 cause.

10 MR. LANDREAU: I don't know if it is either,
11 Judge.

12 THE COURT: I would decline to strike her as
13 a challenge for cause. Ms. Farrar, do you have
14 anything?

15 MS. FARRAR: Yes. I would move to strike
16 Gordon Eugene Cox. He stated that he has not yet
17 received an order back on the modification or a
18 final order where the members of my firm
19 represent his ex-wife, so there's still a pending
20 representation.

21 THE COURT: Well, he's indicated that that
22 would not affect his or influence him in his
23 decision, and I will decline to strike him on a
24 challenge for cause. Anything further?

25 MR. LANDREAU: No, Your Honor.

1 THE COURT: All right. There are some
2 motions, Ms. Farrar, you have at this time?

3 MS. FARRAR: Yes, Your Honor. I believe
4 there's an outstanding motion to continue based
5 on --

6 THE COURT: Well, I denied that yesterday
7 afternoon. And you were called and informed that
8 I had denied the motion to continue?

9 MS. FARRAR: That's right.

10 THE COURT: I didn't see it until yesterday
11 afternoon. When was it filed?

12 MR. LANDREAU: I believe Tuesday, Your
13 Honor.

14 MS. FARRAR: Your Honor, I received the
15 laboratory report, with apologies, the day before
16 Thanksgiving. And also was still waiting, and I
17 understand the circumstances completely, but Ms.
18 Wilson had not had an opportunity to prepare the
19 requested transcripts I ordered.

20 THE COURT: I think she prepared those and
21 delivered them to you yesterday.

22 MS. FARRAR: I received them, Your Honor, in
23 the afternoon. But concerning the expert
24 witness, the independent laboratory analysis, I
25 would still move to be able to get that analysis

1 into evidence, and I realize I can't do that
2 without my expert here. He's not here. But if I
3 were allowed the continuance and the
4 extraordinary expenses, and that's the other
5 motion, motion for extraordinary expenses, which
6 I understood you denied yesterday, I would like
7 to put on my offer of proof about what I would
8 expect to prove to preserve that for appeal, Your
9 Honor.

10 THE COURT: Well, had you made any
11 arrangements to bring him here for this week?

12 MS. FARRAR: No, Your Honor.

13 THE COURT: And you understood the case was
14 set for trial this week; did you not? Is there
15 any particular reason why you made no
16 arrangements to have him here for this week?

17 MS. FARRAR: I was waiting for the results
18 of the laboratory analysis.

19 THE COURT: Well, you had informed the Court
20 that they would be ready for this week, did you
21 not, at the last motion that you made and at the
22 last term of court in which you -- which was
23 September?

24 MS. FARRAR: Yes, Your Honor. And I did
25 file a motion for his --

1 THE COURT: Which was a two full months
2 ago.

3 MS. FARRAR: I filed the motion for his
4 expenses to fly out here, and I was told -- I
5 believe that the Court said let's wait on what
6 the results are and then I will decide whether to
7 grant the extraordinary expenses for him to
8 travel out here, and then I did the motion for
9 extraordinary expenses as soon as I got the
10 results.

11 THE COURT: Which shows that there was
12 methamphetamine present?

13 MS. FARRAR: Yes, Your Honor. It was -- my
14 offer of proof would be that --

15 THE COURT: And you would want to fly the
16 witness here to show that there was
17 methamphetamine present?

18 MS. FARRAR: To show that it was in such
19 small a quantity related to the liquid substance,
20 that that would be preserved for the record.

21 THE COURT: Well, do you have a written
22 report from this individual?

23 MS. FARRAR: Yes, Your Honor.

24 THE COURT: Will the State stipulate to that
25 report?

1 MR. LANDREAU: Your Honor, we have no
2 problem with her introducing the report in terms
3 of an appellate record. Our position is under
4 Alabama law, the ratio of meth to other
5 substances in the mixture is immaterial and
6 irrelevant, so we would object to it going to the
7 jury. But if she wants to place it there for
8 some purposes of an issue down the road, we don't
9 have any objection to that. We just don't think
10 it should go to the jury.

11 THE COURT: Well, there's been a Motion in
12 Limine that has been filed --

13 MR. LANDREAU: Yes, sir.

14 THE COURT: -- in this matter in which the
15 State is asking that the argument not be made as
16 being impermissible. Do you have any response to
17 that, Ms. Farrar?

18 MS. FARRAR: Your Honor, I would object to
19 the Motion in Limine. The jury has a right to
20 know the total circumstances surrounding this
21 alleged methamphetamine lab drug bust, and my
22 client has received information that was prepared
23 by the expert witness, and I believe that it
24 would be in the interest of justice that this
25 information and report be preserved for the

1 record and placed in the file. If it's the
2 Court's ruling that the jury doesn't see it,
3 that's one thing, but I would want it in the file
4 to be preserved.

5 THE COURT: Let me say that I think it would
6 be permissible for the defense to show the
7 percentage of methamphetamine in any
8 controlled -- in any volume of material other
9 than what is there.

10 MS. FARRAR: I don't understand.

11 THE COURT: Well, what I'm saying is your
12 client is being charged with possession of 28
13 grams or more of methamphetamine; is that
14 correct?

15 MR. LANDREAU: Yes, Your Honor.

16 THE COURT: And if you have something to
17 show there is not 28 grams in there, in this case
18 you have a mixture that has methamphetamine in
19 it, according to your report. Does it state the
20 actual amount of methamphetamine in that
21 mixture?

22 MS. FARRAR: Yes, Your Honor.

23 MR. LANDREAU: Your Honor, in response,
24 State's position is, under case law, if it's in a
25 mixture such as this, it is the total weight of

1 the mixture, not the weight of the active
2 ingredient within the mixture.

3 MS. FARRAR: And I have two arguments about
4 that. The case law is certainly that a mixture
5 is defined as containing the drug and containing
6 other substances, but there has been case law
7 about what other substances can be defined as
8 being part of the mixture and what are excluded.

9 THE COURT: Do you have that for me to look
10 at?

11 MS. FARRAR: Yes, Your Honor.

12 MR. LANDREAU: Ms. Farrar, are you referring
13 to the Fletcher case?

14 MS. FARRAR: Yes.

15 MR. LANDREAU: Your Honor, we submit that's
16 not applicable. That case says if you have two
17 substances that are together that do not combine
18 into one mixture, in the Fletcher case it was
19 crack cocaine and soap chips, that's not a
20 mixture. But Fletcher also holds that if the
21 methamphetamine or drugs are comingled and
22 diffused among a liquid or other substance, then
23 you do count the entire weight of the mixture.

24 MS. FARRAR: Our position would be that it's
25 possible in our case that it's slightly different

1 than that. It's not soap certainly, but that
2 there could be new law by the Alabama Court of
3 Criminal Appeals up to the Supreme Court. There
4 is a Federal law where mixtures are analyzed to
5 determine the amount of alleged controlled
6 substance.

7 THE COURT: Do you have the Fletcher case
8 that you have cited?

9 MS. FARRAR: Yes, sir.

10 MR. LANDREAU: Here it is, Judge.

11 (Brief pause.)

12 THE COURT: All right. Do you have
13 something further, Ms. Farrar?

14 MS. FARRAR: I do not have the case with me
15 or the case name, but in my research I found a
16 case where the Defendant had appealed or had a
17 Rule 32 for ineffective assistance of counsel.
18 One of the allegations was that the defense
19 attorney asked the question of the forensic
20 scientist did you check the ratio of the alleged
21 controlled substance to the other ingredients of
22 the mixture which was weighed. The scientist
23 said in the presence of the jury, no, because I
24 didn't have to. The Defendant was arguing that
25 that was a showing that the attorney was not

1 learned in the law, but the Justices said, no,
2 that was not an example of ineffective assistance
3 of counsel. That was something that was
4 appropriate, so I would just offer that.

5 THE COURT: May I see the report that you
6 have from your --

7 MS. FARRAR: Yes, Your Honor.

8 THE COURT: -- testing?

9 MS. FARRAR: I believe Mr. Landreau has a
10 copy, and I've marked it as Defendant's Exhibit
11 1. It has five pages.

12 THE COURT: Now, this is his result just of
13 the sample?

14 MS. FARRAR: Of the samples. They each
15 contained five milliliters. There were two
16 samples. One was found to have approximately
17 point three milligrams per milliliter, and the
18 other sample was found to have 1.8 milligrams per
19 millileter. Attached to the report is the CV of
20 the independent expert, Dr. John Hiatt.

21 THE COURT: I don't see any problem with
22 this report being entered into evidence and being
23 presented to the jury. There's been a Motion in
24 Limine that has been filed, and the Court would
25 grant the State's Motion in Limine to the extent

1 that it would be impermissible for you to argue
2 to the jury that a mixture containing
3 methamphetamine is not sufficient for conviction.

4 MR. LANDREAU: Judge, just for
5 clarification, as I understand it, the Court is
6 telling defense counsel they cannot argue that
7 there was really less than 28 grams of meth
8 regardless of the weight of the mixture; is that
9 correct?

10 THE COURT: No. What I'm telling you is she
11 cannot bring up that there is -- that a jury
12 cannot convict upon the fact that there is less
13 than the actual 28 grams of methamphetamine; that
14 it is clearly the law that it is a mixture
15 containing methamphetamine of 28 grams or more.
16 And the Court is going to instruct the jury as to
17 what the definition of the mixture as cited by
18 the Court in the Fletcher opinion.

19 MR. LANDREAU: Judge, do you want to keep
20 the Fletcher --

21 THE COURT: I wrote down the definition.

22 MR. LANDREAU: Oh, okay. I was just going
23 to let you keep the case because I didn't think I
24 would be needing it again.

25 MS. FARRAR: But, Your Honor, I would be

1 allowed to argue to the jury simply the fact that
2 there was found to be this much proportion?

3 THE COURT: Yeah. I think you are entitled
4 to ask of the State's witness what the proportion
5 of methamphetamine is to that as well as present
6 the proportion from your expert analysis.

7 MS. FARRAR: Your Honor, I don't have my
8 expert to get this evidence in. I don't know how
9 I can get it in without laying the foundation
10 of --

11 THE COURT: Well, I don't see any problem
12 with there being a stipulation that that be
13 entered into evidence.

14 MR. LANDREAU: No problem with that.

15 THE COURT: And it has his background as
16 well as --

17 MS. FARRAR: Thank you, Your Honor.

18 THE COURT: -- education and training and
19 experience to show that he is an expert.

20 MS. FARRAR: Yes, sir. And we need to get
21 that on the record before the jury, or is it
22 sufficient to have it on the record now?

23 THE COURT: Well, I mean, you'll be able to
24 read that out to the jury as part of your
25 exhibit.

1 MS. FARRAR: Yes, sir.

2 THE COURT: All right. You have 30 minutes
3 to strike a jury.

4 (Counsel and the circuit court clerk
5 struck the jury without the presence
6 of the court reporter.)

7 (Jury impaneled.)

8 (Rest of jury venire dismissed.)

9 (Jury sworn.)

10 THE COURT: Ladies and gentlemen of the
11 jury, there are three cases that are before you
12 for trial today, and the Court has read out the
13 indictments that bring these cases to the Court
14 for trial, and I'm not going to reread the
15 indictments, but I want to remind you that the
16 indictments are not evidence in the case. They
17 are merely the written means by which the cases
18 are brought before the Court for trial. The
19 indictments also serve the purpose of notifying a
20 defendant with particularity of the offenses with
21 which he is charged, and it sets out the elements
22 of the offense which must be proved by the State
23 of Alabama.

24 Before proceeding with the trial of the
25 case, it may be helpful to you and to the Court

1 that you understand the rules of procedure that
2 will be followed by you and by the Court in these
3 cases. These cases are criminal cases. The
4 procedure for the trial of these cases, as in
5 criminal cases of the same character, will be as
6 follows.

7 Mr. Landreau on behalf of the State will
8 make an opening statement outlining the State's
9 case. Ms. Farrar will then make an opening
10 statement outlining the defense. Each side in
11 the opening statement will be confined to an
12 outline of the case and a statement of what they
13 expect the evidence to show. Their statements
14 are intended to inform you and the Court about
15 the cases, so that we will both be familiar with
16 the theories and contentions of each side from
17 the beginning.

18 Following these opening statements by the
19 attorneys, witnesses will first be called by the
20 State to testify. After the State has presented
21 witnesses, the Defendant will then be permitted
22 to call witnesses to testify. All witnesses will
23 be sworn and will testify under oath. Their
24 testimony will be evidence. There may be
25 exhibits offered which, if received by the Court,

1 will also be evidence. It will be upon all of
2 this evidence, the testimony and the exhibits,
3 that you may consider in arriving at your final
4 verdict, and you may consider only the testimony
5 from the stand and the exhibits that have been
6 entered into evidence in reaching your final
7 verdict.

8 Following the close of evidence in the case
9 or presentation of evidence, the attorneys will
10 again have the privilege of addressing you, and
11 this is referred to as summation or closing
12 argument. The attorneys have the right to
13 discuss the evidence and all the reasonable
14 inferences to be drawn therefrom to help you
15 arrive at a just and true verdict. Mr. Landreau
16 on behalf of the State will have the right to
17 open the arguments, followed by Ms. Farrar on
18 behalf of the Defendant. Mr. Landreau will then
19 have the right to a second closing argument, and
20 this is primarily based upon the fact that the
21 burden of proof is upon the State of Alabama in
22 all three of these cases to prove the Defendant
23 guilty as charged. The Defendant is innocent
24 until proven guilty.

25 Following the arguments of the attorneys, it

1 will be the duty of the Court to state to you the
2 applicable rules to guide you in arriving at your
3 verdict. The case will then be submitted or
4 cases will be submitted to you for your
5 deliberation. Upon retiring to the jury room to
6 consider your verdict, you elect one of your
7 number as foreperson to moderate your discussion
8 and to sign and return the verdicts chosen by you
9 to the Court.

10 It is my duty as judge to see that the trial
11 progresses in an orderly fashion, to rule upon
12 all legal matters that are presented, to define
13 the issues involved, and instruct the jury as to
14 the law applicable in the particular cases. It
15 is your duty as jurors to follow the law as so
16 stated to you by the Court. You will, therefore,
17 render a verdict in accordance with the facts as
18 you determine them from the evidence and the law
19 as given to you by the Judge.

20 In determining what the true facts are from
21 the evidence, you may take into consideration any
22 natural interest or bias a witness may have as a
23 result of any connection with the case. You may
24 take into consideration the interest or bias a
25 witness may have shown while testifying. And you

1 may take into consideration the demeanor of any
2 witness, as to whether the witness has apparently
3 testified frankly or evasively. You may take
4 into consideration any matter which you would in
5 your everyday affairs in passing upon the
6 truthfulness and accuracy of the testimony.
7 Weigh the testimony in the light of your common
8 observation and experience and reach a verdict
9 that will be based upon the truth as you
10 determine it from all of the evidence.

11 During the course of the trial, I may rule
12 on objections by the attorneys as to the
13 admissibility of testimony or other evidence. It
14 is the duty of an attorney to make such
15 objections to the offer of evidence which he or
16 she deems illegal or improper. You must not
17 concern yourselves with the reasons for my
18 rulings since they are controlled and required by
19 rules of law. You are not to speculate as to
20 possible answers to questions which I do not
21 require to be answered. The overruling of
22 objections to evidence is not intended to
23 indicate the weight to be given that admitted
24 evidence. The admitted evidence is to be
25 considered along with all the other evidence.

1 You are to disregard any evidence or offer of
2 evidence which the Court has excluded.

3 An attorney is an officer of the court. It
4 is the attorney's duty to present evidence on
5 behalf of the client, to make such objections as
6 the attorney deems proper, and to fully argue the
7 client's case. An attorney's statements and
8 arguments are intended to help you understand the
9 evidence and apply the law. However, their
10 arguments are not evidence, and you should
11 disregard any remark, statement or argument which
12 is not supported by the evidence or by the law as
13 given to you by the Court. Likewise, statements
14 made by the Court are not evidence and are not to
15 be considered by you as evidence.

16 No juror should attempt to make an
17 individual investigation of the facts or of
18 anyplace testified about. You are not authorized
19 to gather evidence on your own account or on
20 behalf of any of the parties to the case. You
21 should not visit the scene of any alleged
22 incident or attempt to inspect or examine any
23 object or property unless that object or property
24 has been received in evidence and your inspection
25 is made either in the courtroom or in the jury

1 room.

2 As a juror, you have a legal right to take
3 notes during the trial, but the Court does not
4 generally recommend the taking of notes by
5 jurors. If notes are taken by you, they should
6 be taken simply as an aid to your memory and for
7 your assistance in that regard, and they may not
8 be exhibited to the other jurors as an
9 authoritative record.

10 During the course of the trial there may be
11 some words or phrases used that need to be
12 defined. The Court will give to you a legal
13 definition of these words or terms. The legal
14 definition sometimes is different from the
15 definition that is customarily ascribed to the
16 word or term. If this should happen, you should
17 accept the Court's definition. In no event
18 should you seek any definition of any word or
19 phrase by consulting any dictionary, encyclopedia
20 or other book. That would be improper for you to
21 do so.

22 Until this case is submitted to you for your
23 deliberations, you must not discuss the case with
24 anyone, nor permit anyone to discuss the case
25 with you or in your hearing. You are to keep an